

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Andrew E. Smyth, Esq. (SBN 60030) Stephen S. Smyth, Esq. (SBN 248433) William J. Smyth, Esq. (SBN 265374) SW SMYTH LLP 4929 Wilshire Blvd, Suite 690 Los Angeles, CA 90010 Tel: 323-933-8401 Fax: 323-933-6089 e-mail: office@smythlo.com		FOR COURT USE ONLY	
<input type="checkbox"/> Debtor's appearing without attorney <input checked="" type="checkbox"/> Attorney for: Debtor			
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION			
In re: Yesenia Villarreal		CASE NUMBER: 2:18-bk-16821-VZ	
		CHAPTER: 13	
		DEBTOR'S NOTICE OF MOTION AND MOTION TO AVOID JUNIOR LIEN ON PRINCIPAL RESIDENCE [11 U.S.C. § 506(d)]	
Debtor(s).		DATE: January 7, 2019 TIME: 10:30 a.m. COURTROOM: 1368 ADDRESS: 255 E. Temple St., Los Angeles, California 90012	
TO CREDITOR HOLDING JUNIOR LIEN (name): TRINITY FINANCIAL SERVICES, LLC			

- 1. NOTICE IS HEREBY GIVEN** that on the above date, time and place in the indicated above, Debtor in the above-captioned case will move this court for an order granting the relief set forth in the motion and accompanying supporting documents served and filed herewith.
- 2. Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. *(If you do not have an attorney, you may wish to consult one.)*
- 3. Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to LBR 9013-1. If you wish to oppose this motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than 14 days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
- 4. Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies under penalty of perjury under the laws of the United States of America that the above-stated hearing date and time were available for this type of Motion according to the self-calendaring procedures of the assigned judge, *(specify name of judge)* Judge **Vincent P. Zurzolo**.

"Bankruptcy Code" and "11 U.S.C." refer to the United States Bankruptcy Code, Title 11 of the United States Code.
"FRBP" refers to the Federal Rules of Bankruptcy Procedure. "LBR" and "LBRs" refer to the Local Bankruptcy Rule(s) of this court.

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

Executed on (date): November 19 2018

SW SMYTH LLP

Printed name of law firm (if applicable)

Stephen Sung Smyth

Printed name of Debtor or Attorney for Debtor



/s/ Stephen Sung Smyth

Signature of Debtor or Attorney for Debtor

MOTION TO AVOID JUNIOR LIEN ON PRINCIPAL RESIDENCE [11 U.S.C. § 506(d)]
(DEBTOR: Yesenia Villarreal)

NAME OF CREDITOR HOLDING JUNIOR LIEN (Respondent): Trinity Financial Services LLC

1. Subject Property: Debtor moves to avoid the junior deed of trust, mortgage or other encumbrance (Lien) encumbering the following real property (Property), which is the principal residence of debtor.

Street address: 1658 East 59th Street

Unit number: _____

City, county, state, zip code: Los Angeles, California 90001

Legal description and /or map/book/page number, including county of recording:

LOT 91 OF AHREN'S MIRAMONTE TRACT ADDITION, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 12 PAGES 110 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

☐ See attached page for legal description of Property or document recording number.

2. Subject Lien

Date and place of recordation of lien recording instrument number and document recording number (specify)

DATE: 07/12/2006, PLACE OF RECORDATION: Los Angeles County, California, RECORDING INSTRUMENT NUMBER: 06 1534944

3. Case History:

a. A voluntary petition under Chapter ☐ 7 ☐ 11 ☐ 12 ☒ 13 of the Bankruptcy Code, 11 U.S.C. was filed in this case on (specify petition date): 06/13/2018

b. ☐ An Order of Conversion to Chapter 13 was entered in this case on (specify date): _____

4. Grounds for Avoidance of Junior Lien:

a. As of (date of title review) 10/05/2018, the Property is subject to the following liens in the amounts specified securing the debt against the Property that the Debtor seeks to have treated as indicated:

(1) (Name of holder of 1st lien) Deutsche Bank National Trust Company in the amount of \$ 516,042.75.

(2) (Name of holder of 2nd lien) Trinity Financial Services LLC in the amount of \$ 251,591.57 ☒ is ☐ is not to be avoided;

(3) (Name of holder of 3rd lien) _____ in the amount of \$ _____ ☐ is ☐ is not to be avoided;

☐ See attached page for additional lien(s).

As of (date of valuation/appraisal) 10/13/2018, Property is worth no more than (value per valuation/appraisal) \$ 480,000.00.

b. As shown here, the Creditor holding the judicial lien encumbering the Property is wholly unsecured.

c. Evidence in Support of Motion:

(1) ☒ The amount of the lien identified in paragraph 3(a)(1) is based on (type of evidence) Creditor's Proof of Claim, attached hereto and identified as Exhibit B.

(2) ☒ The amount of the lien identified in paragraph 3(a)(2) is based on (type of evidence) Creditor's Proof of Claim, attached hereto and identified as Exhibit C.

(3) ☐ The amount of the lien identified in paragraph 3(a)(3) is based on (type of evidence) _____, attached hereto and identified as Exhibit ____.

(4) ☒ The relative priority of the liens encumbering the Property is established by evidence attached as Exhibit **B & C**.

(5) ☒ The value of the Property from paragraph 3(b) is based on (type of evidence) a certified real estate appraiser's report, attached as Exhibit A.

(6) ☒ Debtor submits the attached Declaration(s).

(7) ☐ Other evidence (specify/identify supplemental evidence): _____ attached as Exhibit ____.

WHEREFORE, Debtor requests that this court issue an order granting this motion in the form of the **Attachment** to this motion. (Attach a separate Attachment for each lien to be avoided.)

Date: November 16, 2018

Respectfully submitted,

/s/ Stephen Sung Smyth

Signature of Debtor or Attorney for Debtor

Stephen Sung Smyth

Printed name of Debtor or Attorney for Debtor

ATTACHMENT TO MOTION/ORDER
(11 U.S.C. § 506: VALUATION/LIEN AVOIDANCE)

This court makes the following findings of fact and conclusions of law:

1. **Creditor Lienholder/Service:** Trinity Financial Services LLC.
2. **Subject Lien:** Date and place of recordation of lien (*specify*): 07/12/2006 in LOS ANGELES COUNTY, CALIFORNIA

Recorder's instrument number and/or document recording number: 06 1534944

3. **Collateral:**
 - a. Real property (street address, city, county and state, where located, legal description or map/book/page number, including county of recording):
1658 East 59th Street, Los Angeles, California 90001 . ☒ See attached page.
 - b. Other collateral: _____ . ☐ See attached page.
 4. **Secured Claim Amount**
 - a. Value of Collateral: \$480,000.00
 - b. Senior Liens (reducing equity in the property to which the Subject Lien can attach):
 - (1) First lien: (\$516,042.75)
 - (2) Second lien: (\$ _____)
 - (3) Third lien: (\$ _____)
 - (4) Additional senior liens (*attach list*): (\$ _____)Subtotal: ([\$36,042.75])
 - c. Secured Claim Amount (negative results should be listed as -\$0-): \$0.00

Unless otherwise ordered, any allowed claim in excess of this Secured Claim Amount is to be treated as a nonpriority unsecured claim and is to be paid pro rata with all other nonpriority unsecured claims in Class 5A of the Plan.
 5. **Lien avoidance:** Debtor's request to avoid the Subject Lien is granted as follows. The effective date of avoidance of the Subject Lien (Lien Avoidance Effective Date) will be upon:
☒ completion of the Chapter 13 Plan, or ☒ receipt of a Chapter 13 discharge in this case.
 6. **Retention of lien until avoidance:** The Creditor Lienholder will retain the Subject Lien for the full amount due under the corresponding note and deed of trust, mortgage or lien if the Debtor's Chapter 13 case is dismissed or converted to any other chapter under the Bankruptcy Code, or if the Collateral is sold or refinanced, prior to the Lien Avoidance Effective Date.
 7. **Retention of rights upon foreclosure of other lien:** In the event that the holder of any other lien on the Collateral forecloses on its interest and extinguishes the Creditor Lienholder/Service's lien rights prior to the Lien Avoidance Effective Date, the Creditor Lienholder's lien shall attach to any proceeds greater than necessary to pay the senior lien(s) from the foreclosure sale.
- ☐ See attached page(s) for more liens/provisions.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
4929 Wilshire Blvd, Suite 690
Los Angeles, CA 90010

A true and correct copy of the foregoing document entitled (*specify*): DEBTOR'S NOTICE OF MOTION AND MOTION TO AVOID JUNIOR LIEN ON PRINCIPAL RESIDENCE [11 U.S.C. § 506(d)] will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 11/19/2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Nancy K Curry (TR) TrusteeECFMail@gmail.com
Rafael R Garcia-Salgado rgarcia@bwsllaw.com, bantle@bwsllaw.com, rjr-nef@bwsllaw.com, jgomez@bwsllaw.com
Richard J Reynolds rreynolds@bwsllaw.com,
psoeffner@bwsllaw.com, tmims@bwsllaw.com, rjr-nef@bwsllaw.com, fcabezas@bwsllaw.com
Stephen S Smyth office@smythlo.com; r58723@notify.bestcase.com
United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
Robert P Zahradka caecf@tblaw.com, RPZ@tblaw.com

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On (date) 11/19/2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtor - Yesenia Villarreal, 1658 E. 59th St., Los Angeles, California 90001

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 11/19/2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

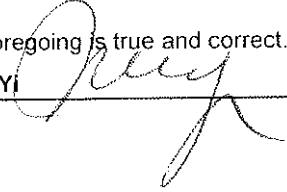
Chambers - Hon. Vincent P. Zurzolo, 255 E. Temple St., Suite 1360/Courtroom 1368, Los Angeles, Ca 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

November 19, 2018 Michelle Yi
Date Printed Name

/s/ Michelle Yi
Signature



SERVED BY UNITED STATES MAIL, CERTIFIED MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

(Attached page to Proof of Service of Document-please include any additional or alternative addresses and attach additional pages if needed)

(Certified Mail required for service on a national bank.)

1st lienholder (name and address) Deutsche Bank Trust Company Americas 60 Wall Street New York, NY 10005 Attn: Officer	Address from: <input type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input checked="" type="checkbox"/> FDIC website <input type="checkbox"/> Other: (specify):	Delivery Method <input type="checkbox"/> US Mail <input checked="" type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____
1st lienholder (name) and Agent for Service of Process (name and address) Deutsche Bank National Trust Company c/o Select Portfolio Servicing, Inc. P.O. Box 65250 Salt Lake City, UT 84165-0250 Attn: Officer	Address from: <input checked="" type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: (specify):	Delivery Method <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____
1st lienholder (name) and Servicing Agent (name and address)	Address from: <input type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: (specify):	Delivery Method <input type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____

2nd lienholder (name and address) Trinity Financial Services, LLC 2618 San Miguel Dr., Suite 303 Newport Beach, Ca 9260 Attn: Don A. Madden, III, President	Address from: <input checked="" type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: (specify):	Delivery Method <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____
2nd lienholder (name) and Agent for Service of Process (name and address) Trinity Financial Services c/o Registered Agent Solutions, Inc. 1220 S St., Suite 150 Sacramento, Ca 95811 Attn: Ricardo Orozco	Address from: <input type="checkbox"/> Proof of Claim <input checked="" type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: (specify):	Delivery Method <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____
2nd lienholder (name) and Servicing Agent (name and address)	Address from: <input type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: (specify):	Delivery Method <input type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____

3rd lienholder (name and address)	Address from: <input type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: (specify):	Delivery Method <input type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail -
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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

		Tracking# _____ Carrier Name: _____
3rd lienholder (name) and Agent for Service of Process (name and address)	Address from: <input type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: (specify):	Delivery Method <input type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____
3rd lienholder (name) and Servicing Agent (name and address)	Address from: <input type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: (specify):	Delivery Method <input type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____

Alternative/Additional Address (name and address)	Address from: <input type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: (specify):	Delivery Method <input type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____
Alternative/Additional Address (name and address)	Address from: <input type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: (specify):	Delivery Method <input type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____


DECLARATION OF REBECCA LOWELL

I, Rebecca Lowell, hereby declare.

1. I am over 18 years of age, and I am qualified to testify as an expert witness in my capacity as a Licensed Residential Property Appraiser with license no. AL038116. I make this declaration of my own personal knowledge.
2. Attached as Exhibit A to this declaration, is my report, which discloses all the data that I have used in forming my opinion of the value of the property commonly known as 1658 East 59th Street, Los Angeles, California 90001 (the "Real Property").
3. My opinion of the value of the Real Property is \$480,000.00 as of October 13, 2018.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and if called upon to testify I could and would competently testify thereto.

Executed this 14th day of November, 2018, at Los Angeles, California.


Rebecca Lowell
Declarant

DECLARATION OF YESENIA VILLARREAL

I, Yesenia Villarreal, hereby declare.

1. I am the debtor in the chapter 13 bankruptcy bearing case number 2:18-bk-16821-VZ. I make this declaration of my own personal knowledge.
2. I own the property commonly known as 1658 East 59th Street, Los Angeles, California 90001 (the "Real Property").
3. My opinion of the value of the Real Property is \$480,000.00 as of October 13, 2018 based upon my personal knowledge that includes a review of an appraisal and knowledge of comparable sales. See attached appraisal of Rebecca Lowell and Exhibit "A."
4. As of the date of this Declaration, the Real Property was and is subject to the following liens in the amount specified securing the debt against the Real Property.
 - a. 1st Lien: Deutsche Bank National Trust Company, as Trustee, on behalf of the holders of the Impac Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2006-3 ("Deutsche Bank"). The approximate balance on the loan related to this lien is \$516,042.75. See attached Exhibit B.
 - b. 2nd Lien: Trinity Financial Services, LLC. See attached Exhibit C. The loan associated with this lien has an approximate balance of \$251,591.57. Please see attached Exhibit C.
5. The purpose of the valuation is to provide for the treatment of the 2nd lienholder's claim as a nonpriority general unsecured claim and, subsequently, avoidance of that lien upon completion and receipt of a discharge in my chapter 13 bankruptcy. The 1st Lien of Deutsche Bank is fully secured for \$516,042.75 with \$0.00 as the unsecured portion of the claim. Therefore, the 2nd Lien of Trinity Financial Services, LLC is \$0.00 for the secured portion of the claim and \$251,591.57 as to the unsecured portion of the claim.

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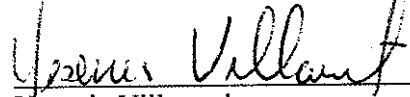
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1 I declare under penalty of perjury under the laws of the State of California and the
2 United States of America that the foregoing is true and correct and if called upon to testify I
3 could and would competently testify thereto.

4 Executed this 12th day of November, 2018, at Los Angeles, California.

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6 Yesenia Villarreal
7 Declarant
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